IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRI. APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.352 OF 2005

Nitin K. Muchhala,
Director of Unity Pharma P. Ltd.
having their Regd. Office at
203, Parimal, 154, Daftary Road,
Malad (E), Mumbai - 400 097. ... Petitioner

V/s

1. Binod Singh,
residing at Valencia,
Hiranandani Gardens,
Powai, Mumbai - 400 076.
2. Amab Raichuramani,
residing at Valencia,
Hiranandani Gardens,
Powai, Mumbai - 400 076.
3. Trigram Ltd.,
36, Vyronos Avenue, Flat No.704,
Nicosia, Cyprus.
4. Brahma Drugs Pvt. Ltd.,
506, Gallena, Harinandani Gardens,
Powai, Mumbai - 400 076.
5. Genom Biotech Pvt. Ltd.,
MIDC, Sinnar, Nasik, Maharashtra.
(Original accused).
6. State of Maharashtra ... Respondents

Mr. Girish Kulkarni for the petitioner.

Mr. B.H. Mehta, A.P.P. for the respondents.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: 2ND MARCH, 2005

ORAL JUDGMENT (Per Khandeparkar, J.):

1. Heard. Leave to delete respondent Nos. 1 to 5.

Amendment to be carried out forthwith.

2. Rule. Rule is made returnable forthwith.

3. Petitioner challenges the order passed by the Metropolitan Magistrate, 10th Court, Andheri, Mumbai, on 4th Dec., 2003 accepting the request for "B" summary by the investigating officer in the case in hand. The bare reading of the impugned order discloses that the same has been passed without following the procedure prescribed by law and the decision and pronouncement made by this Court as well as the Apex Court on the point that the complainant should be heard in the matter prior to passing such order as well as that order should disclose the application of mind by the Magistrate before passing the "B" summary order on request made by the police authorities. Perusal of the order discloses that it is in the form of a rubber stamp of having accepted the submission made by the police authorities and therefor grant of "B" summary. Obviously, it does not disclose any application of mind. That apart, the record also nowhere discloses that the petitioner was complainant and was heard in the matter before the grant of "B" summary. Being so, the order is not sustainable

and liable to be set aside and to be remanded to the Metropolitan Magistrate to decide the matter afresh after hearing the complainant and on proper application of mind and in accordance with the provisions of law by passing speaking order in that regard. Hence the impugned order is quashed and set aside.

4. The matter is remanded to the Metropolitan Magistrate to dispose of the request made by the police authorities by "B" summary in accordance with the provisions of law and after hearing the complainant/petitioner herein. The learned Magistrate is expected to dispose of the matter in accordance with the provisions of law as expeditiously as possible and in any case within four weeks from the date of receipt of the writ by this Court.

5. Rule is made absolute in terms with no order as to costs.

(R.M.S.Khandeparkar, J.)

(P.V. Kakade, J.)